

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED

JUL 07 2009


CLERK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

ORVILLE O. WALKING EAGLE, JR.,

Defendant.

CR 09-30031 (01)

ORDER AND OPINION

The defendant has filed a motion (Doc. 17) to suppress statements with a supporting memorandum (Doc. 18). The government filed a response (Doc. 20). United States Magistrate Judge Moreno conducted an evidentiary hearing on May 11, 2009. The defendant and counsel for both parties were present. I have conducted a *de novo* review of the redacted transcript (Doc. 35) as well as the un-redacted transcript itself (not filed) and all other documents and exhibits. I have listened to the compact disk which contains the recorded statement of the defendant. I have read and considered also the letter from defendant's attorney dated May 13, 2009, with the copy of the grand jury testimony of Valencia Guerue.

The magistrate issued a report and recommendation (Doc.30) after announcing his bench decision on May 27, 2009. The recommendation is to grant in part and deny in part the motion to suppress.

The defendant filed objections (Doc. 33) dealing with the recommendation as to the suppression motion which objections are without legal merit.

The report and recommendations should be adopted, the suppression motion denied in part, and the objections overruled.

Now, therefore,

IT IS ORDERED, as follows:

1) The motion (Doc. 17) is granted to the extent it seeks to suppress, as substantive evidence at trial, the pre-arrest statements allegedly made by the defendant to tribal officers at the residence of Valencia Guerue on January 11, 2009, and the alleged post-arrest statements to the FBI agent and criminal investigator concerning the tribal enrollment of the defendant.

2) In all other respects, the motion (Doc. 17) is denied. This includes any attempt to prevent the government from using the statements described above for impeachment purposes if the defendant testifies at trial.

3) The report and recommendation (Doc. 30) is adopted.

4) The objections (Doc. 33) of the defendant to the report and recommendation are overruled.

Dated this 6th day of July, 2009.

BY THE COURT:

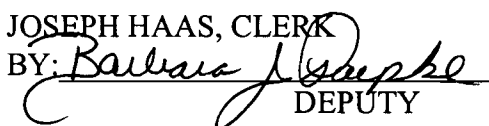


CHARLES B. KORNMANN
United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY:



DEPUTY

(SEAL)